

Message Text

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SUBJECT: BELGIAN REQUEST FOR INFORMATION RE ABORTION LAW

REF: BRUSSELS 2154

1. BRUSSELS 2154 REQUESTED INFORMATION CONCERNING SUPREME COURT DECISIONS REGARDING ABORTION SINCE ROE V. WADE IN 1973. THIS MESSAGE BRIEFLY SUMMARIZES MAJOR SUPREME COURT DECISIONS AND LEGISLATIVE DEVELOPMENTS IN THIS AREA SINCE 1973. TEXTS OF SUPREME COURT DECISIONS AND RECENT FEDERAL LEGISLATION AND REGULATIONS BEING POUCHED.

2. ROE V. WADE PRECIPITATED GREAT AMOUNT OF LITIGATION AND STATE LEGISLATIVE ACTION IN U.S., AS COURTS AND LEGISLATURES SOUGHT TO RECONCILE OR REVISE EXISTING LAWS ON ABORTIONS TO PRINCIPLES LAID DOWN BY SUPREME COURT. SUPREME COURT DECISIONS HAVE PRIMARILY INVOLVED REFINEMENT AND APPLICATION OF ROE V. WADE'S PRINCIPLES TO ISSUES SUCH AS STATE REGULATION OF PERSONS PERFORMING
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PAGE 02 STATE 046194

ABORTIONS, ADVERTISING, OR CONSENT BY PARENTS OR SPOUSES, WHICH WERE NOT RESOLVED OR ADDRESSED BY THE COURT IN ITS ORIGINAL DECISION.

3. ABORTION REMAINS A CONTROVERSIAL ISSUE IN MANY QUARTERS IN THE U.S. THE CHARACTERIZATION OF PARTICULAR SUPREME COURT DECISIONS IN RELATION TO THE COURT'S

INITIAL DECISION THEREFORE OFTEN REFLECTS THE ATTITUDE OF THE PERSON MAKING THE CHARACTERIZATION, AND WE ARE RELUCTANT TO TRY TO CHARACTERIZE THE DIRECTION OR FUTURE COURSE OF THE COURT'S DECISIONS.

4. THE FOLLOWING ARE BROAD BRUSH SUMMARIES OF MAJOR SUPREME COURT DECISIONS REGARDING ABORTION SINCE 1973. MANY OF THESE CASES INVOLVED MULTIPLE ISSUES AND BEL- GIANS SHOULD BE ENCOURAGED TO REVIEW ENTIRE TEXTS RATHER THAN TO RELY ON SUMMARIES.

A. BIGELOW V. VIRGINIA (JUNE 16, 1975) - HELD THAT VIRGINIA LAW WHICH IN EFFECT PROHIBITED PUBLICATION OF COMMERCIAL ADVERTISEMENT FOR ABORTION SERVICES IN ANOTHER STATE VIOLATED CONSTITUTIONAL GUARANTEES OF FREEDOM OF SPEECH AND PRESS.

B. CONNECTICUT V. MENILLO (NOVEMBER 11, 1975) - THE SUPREME COURT HELD THAT STATES COULD PROHIBIT ABORTIONS BY NON-PHYSICIANS.

C. PLANNED PARENTHOOD OF MISSOURI V. DANFORTH (JULY 1, 1976) - A COMPLEX DECISION INVOLVING MANY ISSUES. IN PART, COURT HELD THAT A STATE COULD REQUIRE A WOMAN TO GIVE WRITTEN CONSENT TO AN ABORTION, BUT THAT A STATE COULD NOT REQUIRE THE CONSENT OF THE WOMAN'S SPOUSE OR UNCLASSIFIED

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PAGE 03 STATE 046194

PARENTAL CONSENT FOR UNMARRIED MINORS. COURT ALSO HELD THAT THE STATE COULD NOT CONSTITUTIONALLY PROHIBIT USE OF SALINE AMNIOCENTESIS.

D. BELLOTI V. BAIRD (JULY 1, 1976) - IN A CASE INVOLVING ANOTHER STATE STATUTE REQUIRING CONSENT FOR MINORS' ABORTIONS, SUPREME COURT REMANDED FOR FURTHER PROCEEDINGS ON PROCEDURAL GROUNDS.

E. POELKER V. DOE (JUNE 20, 1977) - HELD THAT A CITY- OWNED PUBLIC HOSPITAL COULD REFUSE, AS A MATTER OF POLICY, TO PROVIDE NONTHERAPEUTIC ABORTIONS TO INDIGENTS.

F. BEAL V. DOE (JUNE 20, 1977) - THE SUPREME COURT HELD THAT THE FEDERAL SOCIAL SECURITY ACT DID NOT REQUIRE STATES PARTICIPATING IN PARTIALLY FEDERALLY FUNDED MEDICAID PROGRAM TO FUND NONTHERAPEUTIC ABORTIONS.

G. MAHER V. ROE (JUNE 20, 1977) IN A COMPANION CASE TO BEAL V. DOE, SUPREME COURT HELD THAT A STATE NEED

NOT FUND NONTHERAPEUTIC ABORTIONS UNDER A STATE WELFARE PROGRAM THAT FUNDED MEDICAL EXPENSES INCIDENT TO CHILD-BIRTH.

5. IN ADDITION TO SUPREME COURT CASES SUMMARIZED ABOVE, ABORTION HAS BEEN A HEATED SUBJECT FOR DEBATE IN CONGRESS AND STATE LEGISLATURES. MOST RECENTLY, AFTER PROTRACTED LEGISLATIVE IMPASSE, CONGRESS ADOPTED A COMPROMISE CONTINUING RESOLUTION FOR DEPARTMENT OF HEALTH, EDUCATION AND WELFARE FUNDING. THE CONTINUING RESOLUTION PROHIBITS HEW'S USE OF FUNDS APPROPRIATED FOR ABORTIONS EXCEPT WHERE THE LIFE OF THE MOTHER WOULD BE ENDANGERED; WHERE PREGNANCY RESULTED FROM RAPE OR INCEST; OR WHERE TWO PHYSICIANS DETERMINE THAT "SEVERE AND LONG-LASTING
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PAGE 04 STATE 046194

PHYSICAL HEALTH DAMAGE TO THE MOTHER WOULD RESULT" WITHOUT ABORTION. HEW HAS RECENTLY PROMULGATED REGULATIONS TO IMPLEMENT THIS LAW; THE REGULATIONS (BEING POUCHES) INCLUDE AN EXTENSIVE ANALYSIS OF THE CONGRESSIONAL DEBATES WHICH PRECEDED ENACTMENT OF THE LAW. VANCE

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